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Introduction

This booklet explains how a TSP account can be divided in an action for divorce, annulment, or legal separation, or garnished to satisfy a participant's past-due alimony or child support obligations.

Please note that the TSP will not review drafts of legal documents. Pages 17-19 of this booklet provide sample language for use in drafting court orders and legal processes. Using the sample language will help to expedite the TSP's processing of the document.

Points of contact are provided on the inside back cover.

Understanding the TSP

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for Federal civilian employees and members of the uniformed services. It is a defined contribution plan that offers the same types of savings and tax benefits that many private corporations offer their employees under "401(k)" plans.

For most civilian Federal employees hired after 1983, the TSP is one part of a three-part retirement system that also includes Social Security and the Federal Employees' Retirement System (FERS) Basic Annuity.

For civilian employees hired before 1984 who did not switch to FERS, the TSP supplements the Civil Service Retirement System (CSRS) annuity.

The FERS and CSRS annuity programs are administered by the Office of Personnel Management (OPM). Court orders related to these benefits should be directed to OPM.

The TSP maintains separate accounts for civilian and uniformed services participants. Thus, if a participant has both a civilian and a

uniformed services TSP account, court orders and legal processes must address each account separately. Pages 15 and 16 of this booklet explain the special rules that apply to uniformed services TSP accounts.

Certain TSP account information is available to spouses. To assist a spouse in developing a valid court order and protecting his or her rights, the TSP will provide the spouse (and the spouse's attorney), upon request, with TSP account information, such as:

- the participant's account balance;
- the participant's outstanding loan balance, if any; and
- participant statements.

However, the TSP will **not** provide personal information, such as the participant's address, Social Security number (SSN), TSP Personal Identification Number (PIN), or date of birth.

Requests for account information must be in writing and directed to the TSP Service Office (see inside back cover for address). They should:

- Provide the participant's name and SSN;
- Identify the individual requesting the information and describe his or her relationship to the participant;
- Describe the information needed; and
- State the purpose for which the information is being requested.

Dividing a TSP Account in an Action for Divorce, Annulment, or Legal Separation

A TSP account can be divided by means of:

- a court decree of divorce, annulment, or legal separation; or
- a court order or court-approved property settlement agreement incident to such a decree.

A court order may be issued at any stage of a divorce, annulment, or legal separation proceeding. The TSP calls such a document a “retirement benefits court order” (court order).



To be honored by the TSP, a court order must meet the requirements found in 5 U.S.C. §§ 8435(c) and 8467, and 5 Code of Federal Regulations (C.F.R.) part 1653, subpart A.

The TSP will review only a *complete copy of a court order*. To be complete, a court order must contain all pages and attachments. It also must provide (or be accompanied by a document that provides):

- the participant’s Social Security number (SSN);
- the name and mailing address of each payee;
- if the current or former spouse of the participant is a payee, the SSN of the spouse-payee. (If the court order requires the payment to be mailed in care of a third party, it must also provide the state of legal residence of the spouse-payee); and
- if the court order is written in a language other than English, a certified English language translation of the entire court order.

The rules for Qualified Domestic Relations Orders (QDROs) that apply to private sector retirement plans do not apply to the TSP. The TSP is not covered by the Employee Retirement Income Security Act of 1974 (ERISA), which governs private sector plans. Therefore, a QDRO,

the court order that is used to divide a private sector plan, may not be valid with respect to the TSP. The TSP will evaluate such an order under its own rules.

A qualifying retirement benefits court order for the TSP must meet four basic requirements set forth in 5 C.F.R. § 1653.2:

- It must be issued by a court in any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or by any Indian court.
- It must expressly relate to the TSP. This means that it must specifically contain the name “Thrift Savings Plan.” Terms such as “all retirement benefits,” “Government benefits,” “Federal retirement benefits,” “Thrift Savings,” or “Thrift Savings Account” are not adequate.
- If the court order requires a payment from a TSP account, it must clearly describe the payee’s entitlement. For example, it can award a specified dollar amount or a fraction or a percentage of the participant’s account as of a specific past or current date. If the court order describes the payee’s entitlement by using a formula, all of the variables in the formula must be included in the court order or be available from TSP records.
- A court order can require a payment only to the participant’s current or former spouse or to the participant’s dependents. Furthermore, the TSP will not honor a court order asking for a single payment to be made jointly (for example, \$10,000 to be divided among the former spouse and dependents). The court order should separately specify the amount of the award made to each person.

5 C.F.R. § 1653.2 states that the TSP will not honor a court order that requires a future payment unless it is possible to calculate and make a current payment equal to the present value of the future payment.

A court order can be used to prevent a participant from withdrawing his or her TSP account during a divorce action. As soon as practicable after receiving a court order that is issued in an action for divorce, annulment, or legal separation, the TSP will “freeze” a participant’s account if:

- the court order names the Thrift Savings Plan and provides that the participant may not obtain a TSP loan or withdrawal; or
- the court order purports to divide a participant’s TSP account.

Once an account is frozen, no new loans or withdrawals are permitted from the account until the action is resolved. All other account activity will be permitted, including investment decisions and payments on existing loans.



The TSP will not freeze an account in response to anything other than the court orders described above.

The TSP processes a court order in four steps:

Step 1. As soon as practicable after the TSP Service Office receives a document that purports to be a qualifying retirement benefits court order, the participant’s account will be frozen.

Step 2. The TSP will then evaluate whether the court order is complete. If the court order is not complete, the TSP will request that the parties submit a complete copy of the order. If a complete copy is not received within 30 days of the date of that notification, the participant’s TSP account will be unfrozen, and no further action based on that court order will be taken.

Step 3. When the TSP receives a complete court order, the TSP will freeze (or retain the freeze on) the participant’s account and evaluate the court order to determine whether it is a qualifying retirement benefits court order and how the account should be divided.

Step 4. The TSP will mail a decision letter to the participant and provide a copy to all the other parties having a legal interest in the action. The decision letter will describe the effect the order will have on the

participant's account and will state when the freeze will be removed from the account. If the court order is not qualifying, the decision letter will explain why. If the order requires a payment, the letter will also explain how the payment amount will be calculated and when the payment will be made.

The party who must pay Federal income tax on the distribution will receive tax reporting and withholding information (see page 14). If the payee is the current or former spouse of the participant, the payee will also receive information about the option to transfer the payment to a traditional IRA or an eligible employer plan.

The freeze will be removed from the participant's TSP account as follows:

- ***If the account was frozen upon receipt of an incomplete court order***, the freeze will be removed if a complete copy of the order is not received within 30 days of the TSP's written request for a complete copy.
- ***If the account was frozen in response to a court order issued to preserve the status quo (i.e., a freeze order)***, the freeze will be removed when the TSP receives a court order that removes the freeze, or, as described below, when the TSP receives a court order that purports to require a payment from the TSP.
- ***If the account was frozen in response to an order that purports to require a payment from the TSP, or in response to a freeze order***, the freeze will be removed as follows:
 - ***If the court order requires a payment from the TSP***, the freeze will be removed after the payment is made.
 - ***If the court order does not require a payment***, the account will remain frozen for 45 days from the date on which the TSP informs the parties in writing that the order does not qualify. The freeze will be removed sooner if the TSP receives a written agreement — signed by both of the parties involved in the divorce proceeding — that it may be removed.

Garnishing a TSP Account for a Participant's Alimony or Child Support Debt

A TSP account can be garnished with a writ, order, summons, or other similar document in the nature of a garnishment that is brought to enforce a participant's child support or alimony obligation. The TSP calls such a document a "legal process."



To be honored by the TSP, a legal process must meet the requirements found at 5 U.S.C. § 8437(e)(3) and 5 C.F.R. part 1653, subpart B.

The TSP will only review a complete copy of a legal process. To be complete, it must contain all pages and attachments and provide (or be accompanied by a document that provides):

- the participant's Social Security number (SSN);
- the name and mailing address of each payee;
- if the current or former spouse of the participant is a payee, the SSN of the spouse-payee. (If the court order requires the payment to be mailed in care of a third party, it must also provide the state of legal residence of the spouse-payee); and
- if the legal process is written in a language other than English, a certified English language translation of the entire legal process.

A legal process must meet three requirements:

According to 5 C.F.R. § 1653.12:

- It must be issued by a court or administrative agency of competent jurisdiction in any of the 50 United States, the District of Columbia, or a territory or possession of the United States, by a court in a foreign country with which the United States has entered into an agreement to honor such processes, or by an official, pursuant to an order of such a court or agency.

- It must expressly relate to the TSP. This means that it must specifically contain the name “Thrift Savings Plan.” Terms such as “all retirement benefits,” “Government benefits,” “Federal retirement benefits,” “Thrift Savings,” or “Thrift Savings Account” are not adequate.
- Either it must expressly require the payment of a stated dollar amount from the participant’s TSP account to satisfy his or her child support or alimony debt, or it must require the TSP to freeze the participant’s account pending receipt of an order to make such a payment from the account. The TSP will not honor a legal process that awards a percentage of an account.

A participant who is liable for alimony or child support can be prevented from withdrawing his or her TSP account. The participant’s account will be frozen as soon as practicable after the TSP receives a legal process that:

- expressly names the Thrift Savings Plan; and
- either requires a payment from the TSP to satisfy a child support or alimony debt or requires the TSP to withhold a portion of the participant’s account in anticipation of an order to make such a payment.

Taking action on a legal process involves four steps:

Step 1. As soon as practicable after the TSP Service Office receives a document that purports to be a qualifying legal process, the participant’s account will be “frozen.”

Step 2. The TSP will then evaluate whether the legal process is complete. If it is not complete, the TSP will remove the freeze from the account and notify the parties to submit a complete copy.

Step 3. When the TSP receives a complete document of legal process, the TSP will again freeze the participant’s account and evaluate the legal process to determine whether it is a qualifying legal process.

Step 4. The TSP will mail a decision letter to the participant and provide a copy to all other parties having an interest in the action. The decision letter will describe the effect the legal process will have on the participant’s account and state when the freeze will be removed from

the account. If the legal process is not qualifying, the decision letter will explain why. If the legal process is qualifying and requires a payment from the TSP, the letter will also explain how the payment amount will be calculated and when the payment will be made.

The party who must pay Federal income tax on the distribution will receive tax reporting and withholding information. If the payee is the current or former spouse of the participant, the payee will also receive information about the option to transfer the payment into a traditional IRA or an eligible employer plan.

The freeze will be removed as explained below.

If the participant's account was frozen upon the TSP's receipt of a complete document purporting to be a qualifying legal process:

- ***If the legal process requires a payment from the TSP***, the freeze will be removed after the payment is made.
- ***If the legal process does not qualify to require a payment from the TSP***, the freeze will be removed immediately and the TSP will inform the parties in writing that the legal process does not qualify.

Some states allow a two-step garnishment process. The first step consists of an order to withhold, which freezes the debtor's assets. The second step consists of an order to deliver, which requires the recipient to pay a specified amount of the debtor's assets to a third party.

If the account was frozen upon receipt of an order to withhold, the freeze will be removed:

- upon receipt of an order removing the freeze;
- after payment pursuant to a qualifying order to deliver; or
- when the TSP informs the parties in writing that an order to deliver does not require a payment from the TSP.

How the Amount of an Entitlement Is Calculated

For a court order:

If a court order awards a percentage or fraction of a TSP account as of a specific day, the payee's entitlement is determined based on that day's account balance.

If a court order awards a percentage or fraction of a TSP account and does not specify a date for calculating the award, the payee's entitlement is determined based on the effective date of the order.

If a court order awards a fixed dollar amount, the payee's entitlement is that dollar amount.

If a court order describes a payee's entitlement as a fixed dollar amount and as a percentage or fraction of the account, the payee's entitlement is the specified dollar amount, even if the percentage or fraction, when applied against the account balance, yields a different result.

A court order cannot require the TSP to pay more than the participant's vested account balance. Therefore, if the payee's entitlement exceeds the participant's vested account balance when the TSP pays the award, the TSP will only pay the vested account balance.

For a legal process:

Because a legal process can only award a specific dollar amount, the payee's entitlement is determined based on the participant's vested account balance at the time of payment.

Effect of a loan

A TSP loan may or may not affect an account balance for purposes of calculating a court-ordered award. For purposes of computing a payee's entitlement, the dollar amount of an outstanding TSP loan is **included in the account balance**, unless the court order specifically

provides otherwise. Therefore, a court order need not mention a TSP loan unless the outstanding loan amount should be excluded from the award calculation.

For example: assuming a participant has a \$10,000 account balance and also has a \$5,000 outstanding loan, his or her account balance for the purpose of computing a court order payee's entitlement would be \$15,000. This is because funds borrowed by a participant are not considered to be withdrawn from his or her account and are expected to be paid back to the account by the participant.

Interest and earnings

Neither interest nor earnings will be paid on the amount of the entitlement unless the court order or legal process specifically provides for them.

If interest or earnings are awarded, the TSP will use the rate of return earned by the Government Securities Investment Fund (G Fund) unless the court order or legal process specifies a different rate.



A court order that requires a rate other than the G Fund rate of return can only require the payment of a stated annual percentage rate or the addition of a per diem dollar amount to the payee's entitlement.

Interest or earnings will be calculated beginning with the business day following the applicable valuation date and ending two business days before payment is processed, unless otherwise provided in the court order or legal process. In no event will the TSP pay more than the participant's vested account balance at the time of payment.

Any interest or earnings awarded will not be segregated from the participant's TSP account or invested separately pending payment, nor will the payee be able to direct the investment of the awarded amount pending payment.

Method, Timing, and Tax Treatment of Payments

Method of payment

TSP payments are made by United States Treasury check directly to the payee or via electronic funds transfer (EFT) to the payee's financial institution. (However, EFT cannot be used to transfer a payment or a portion of a payment to an IRA or eligible employer plan.)



The TSP will make only one disbursement per payee under a court order or legal process; the TSP will not make a series of payments even if the order or process requires it, or even if the participant's account balance is insufficient at the time of payment for the TSP to satisfy the payee's entire entitlement. The TSP will honor a second order, however.

The payment will be made *pro rata* from all TSP investments in which the participant is invested

- based on the balance in each fund on the date payment is made; and
- from all contribution sources (i.e., from employee contributions and employing agency or service contributions, if applicable).

All or part of a payment to a current or former spouse under a court order or a legal process may be transferred to a traditional IRA or an eligible employer plan.

Current or former spouses asking the TSP to transfer the payment to a traditional IRA or an eligible employer plan must use the proper TSP forms to request such a transfer. **These forms are provided to the participant's current or former spouse with the TSP decision letter. The TSP will not honor transfer forms from financial institutions.**

The TSP is an eligible employer plan. Therefore, if the current or former spouse of the participant has a TSP account, he or she can transfer all or part of the payment to that account.

The terms “traditional IRA” and “eligible retirement plan” are defined in the TSP tax notice “Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders,” which explains the Federal income tax treatment of court-ordered awards. The tax notice will be provided to the payee with the TSP decision letter. It is also available from the TSP Web site at www.tsp.gov, from the participant’s agency personnel office or service TSP representative, or from the TSP Service Office.

Sometimes a court order or legal process may instruct the TSP to mail a payment to a third-party addressee, such as the payee’s attorney. However, in such cases, the current or former spouse of a participant still has the right to ask the TSP to transfer a payment to a traditional IRA or an eligible employer plan. Therefore, even if a court order or legal process requires the TSP to mail a current or former spouse’s payment to a third-party addressee, the TSP will honor the spouse’s request to transfer the payment.



A payment that is properly made cannot be returned to the TSP.

Timing

The TSP ordinarily makes payments **60 days** after it issues the decision letter that describes the effect the court order or legal process will have on the participant’s account. If the payee is the current or former spouse of the participant, the payee can ask to receive the payment sooner by:

- waiving the tax notification period;
- making a Federal income tax withholding election; or
- asking the TSP to transfer the payment to a traditional IRA or an eligible employer plan.

However, in no case will payment be made earlier than 30 days after the date of the TSP decision letter.

Tax treatment

If payment is made to the current or former spouse of the participant, the payment is included in the gross income of the recipient spouse for the tax year in which the payment is made.

If the payment is made to someone other than the current or former spouse of the participant (e.g., a child or a support enforcement agency), the payment is included in the gross income of the participant for the tax year in which the payment is made.

A payment in response to a retirement benefits court order or legal process is not subject to an early withdrawal tax penalty. Such distributions are exempt from the early withdrawal penalty under the Internal Revenue Code.

Special Rules for Uniformed Services Accounts

When a participant has both a civilian and a uniformed services TSP account, a single court order or legal process can affect both accounts. However, each account must be addressed separately.



The court order or legal process must specify separately how the payment should be taken from each account.

When a uniformed service member's account contains contributions from pay subject to the combat zone tax exclusion:

Such pay is exempt from Federal income taxes. Therefore, TSP contributions from such pay are also exempt from Federal income taxes when they are subsequently distributed from a TSP account pursuant to a qualifying court order or legal process.

When a TSP payment includes both taxable and tax-exempt money from a uniformed services account:

The TSP will make the payments on a *pro rata* basis from both taxable and tax-exempt balances unless the court order or legal process directs otherwise.

When the payee wishes to transfer or roll over a payment that includes tax-exempt funds:

If a current or former spouse receives a TSP payment containing a tax-exempt balance (i.e., contributions from combat zone pay), the tax-exempt portion may be transferred or rolled over into a traditional IRA or transferred into certain eligible employer plans, ***but only if the IRA or plan accepts tax-exempt balances.***

For more detailed information regarding the transfer or rollover of payments that include tax-exempt funds, see the TSP tax notice “Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders.” The tax notice will be provided to the payee with the TSP decision letter. It is also available from the TSP Web site at www.tsp.gov, from the participant’s agency personnel office or service TSP representative, or from the TSP Service Office (see address and telephone number on inside back cover.)

If the current or former spouse elects to transfer or roll over only part of the payment into a traditional IRA or an eligible employer plan, **the taxable portion of the payment will be transferred to the IRA or plan first.**

Amounts that are not transferred will be paid directly to the spouse or former spouse receiving the payment.

Tax-exempt balances in a uniformed services TSP account may not be transferred into a civilian TSP account.

Sample Language for a Qualifying Retirement Benefits Court Order

(Note: A retirement benefits court order must meet the requirements found at 5 U.S.C. §§ 8435(c) and 8467, and 5 C.F.R. part 1653, subpart A. The Thrift Savings Plan will honor any court order or court-approved property settlement agreement that meets these requirements. Use of the format below is not required.)

[court name]

In re the Marriage of:)
)
Petitioner)
and)
Respondent)

RETIREMENT BENEFITS COURT ORDER

THIS MATTER having come before the court on motion, and the court, after reviewing the motion and being otherwise fully advised of the matter:

(Note: Any **ONE** of the following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.)

ORDERED: [payee's name, Social Security number (SSN), and address] is awarded \$____ from the [civilian or uniformed services] Thrift Savings Plan account* of [participant's name, SSN, and address].

-OR-

ORDERED: [payee's name, SSN, and address] is awarded ____% of the [civilian and/or uniformed services] Thrift Savings Plan account[s]* of [participant's name, SSN, and address] as of [date].

-OR-

ORDERED: [payee's name, SSN, and address] is awarded [frac-

*If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.

tion] of the [civilian and/or uniformed services] Thrift Savings Plan account[s]* of [participant's name, SSN, and address] as of [date].

(Note: The following optional language can be used in conjunction with any of the above examples.)

FURTHER ORDERED: Earnings will be paid on the amount of the entitlement under this ORDER until payment is made.

Dated: _____

BY THE COURT:

Judge's signature

* If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.

Sample Language for a Qualifying Legal Process

(Note: A legal process (an alimony and/or child support garnishment order) must meet the requirements of 5 U.S.C. § 8437(e)(3) and 5 C.F.R. part 1653, subpart B. The Thrift Savings Plan will honor any legal process that meets these requirements. Use of the format below is not required.)

[court name]

Petitioner)
vs.)
Respondent)

ORDER FOR GARNISHMENT OF A TSP ACCOUNT

WHEREAS by order of this court [participant's name, Social Security number (SSN), and address] was required to pay alimony and/or child support to [payee's name, SSN, address, and relationship to participant];

AND WHEREAS [participant's name] has failed to meet this obligation and is currently \$_____ in arrears;

IT IS THEREFORE ORDERED that the Thrift Savings Plan (TSP) pay to [payee's name] \$_____ from the [civilian or uniformed services] TSP account* of [participant's name] to satisfy the obligation.

IT IS FURTHER ORDERED that the earnings will be paid on the amount of the entitlement under this ORDER until payment is made. (**Note:** This paragraph is optional.)

Dated: _____

BY THE COURT:

Judge's signature

* If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.

Points of Contact

Court orders, legal processes, and account information requests relating to the Thrift Savings Plan (TSP) must be submitted to the TSP record keeper:

TSP Legal Processing Unit
Fairfax Post Office
CODIS — P.O. Box 4390
Fairfax, VA 22038-9998

Fax: 1-703-592-0151

Overnight address:

SI International
Fair Oaks Facility
ATTN: CODIS/TSP Legal Processing Unit
Suite 700
11781 Lee Jackson Memorial Highway
Fairfax, VA 22033

Telephone Number: (877) 968-3778 (toll-free)
for callers outside the U.S. and Canada,
(504) 255-8777 (not toll-free)

TDD: (877) 847-4385 (toll-free)
for callers outside the U.S. and Canada,
(504) 255-5113 (not toll-free)

Court orders relating to the civilian retirement benefits administered by the Office of Personnel Management (OPM) must be submitted to:

U.S. Office of Personnel Management
Court Ordered Benefits Branch
P.O. Box 17
Washington, DC 20044

Federal Retirement Thrift Investment Board



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